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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,164	08/28/2001	Amit Patel	967.060US1	4647
21186	7590	02/13/2004	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			JIANG, SHAOJIA A	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/941,164	<b>Applicant(s)</b> PATEL ET AL.	
	<b>Examiner</b> Shaojia A Jiang	<b>Art Unit</b> 1617	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-12 and 22-28.

Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**

2/9/04

***Advisory Action***

This Office Action is a response to Applicant's proposed amendment and response after FINAL filed on January 26, 2004.

2. Applicant's proposed amended claims deleting a claimed agent and adding new limitations in the proposed amended claims 1 and 7, the independent claim, and also adding new claim, present a new issue for search and consideration by the Examiner since the scope of claims have been changed and would thus require a new search and new rejections.

Therefore, the proposed amendment After Final will not be entered.

5. Applicant's remarks filed January 26, 2004 with respect to the rejection of 1-12 and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser (6,221,345, of record), Palinczar (4,724,139, of record), and Kasat et al. (5,424,070 , of record) in view of Bonastre Gilabert et al. (WO 2000001875, of record) and Kropf et al. (WO 2000047177, of record) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated November 19, 2003 (not June 3, 2003 as Applicant asserts), in view of the not entered amendment as indicated above.

Again, Applicants argument that Esser reference does not teach a single formulation that includes glycery stearate, dicapryl ether, cetearyl alcohol, and Ceteareth-20, is not found convincing. However, the instant claims reciting that an oil phase **comprising two or more of a mixture** of active agents herein, clearly read on the

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teachings of Esser, since Esser clearly discloses her composition (formulation) for example, consisting of glycery stearate, cetearyl alcohol, and water (see Example 11); or consisting of glycery stearate, Cetearth-20, and water (see Example 12). Moreover, active agents herein in the oil phase are known to be useful in antiperspirant deodorant compositions according the cited prior art herein.

It is noted that the transitional phrases “comprising” is employed in the instant claimed composition. Applicant is requested to note that the transitional term “comprising” is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See MPEP 2111.03.

Applicants also agree that Palinczar reference discloses the antiperspirant deodorant in a form of stick-type whereas the instant invention is not directed to sticks and do not contain waxes. However, the instant antiperspirant deodorant is directed to a form of roll-on. Moreover, Palinczar has been cited by the examiner primarily for its teachings that glycery stearate, cetyl palmitate, fatty alcohols and antiperspirant such as aluminum chlorohydrates are known to be useful in antiperspirant deodorant compositions.

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 208 SPQ 871 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). See MPEP 2145.

Further, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes

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into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In re McLaughlin , 170 USPQ 209 (CCPA 1971). See MPEP 2145.

In the instant case, as discussed above and in the previous Office Action, motivation to combine the teachings of the prior art cited herein to make the present invention is seen. The claimed invention is clearly obvious in view of the prior art.

The record contains no clear and convincing evidence of nonobviousness or unexpected results for the combination method herein over the prior art. In this regard, it is noted that the specification provides no side-by-side comparison with the closest prior art in support of nonobviousness for the instant claimed invention over the prior art.

In the instant case, as discussed above and in the Final Office Action, motivation to combine the teachings of the prior art cited herein to make the present invention is seen. The claimed invention is clearly obvious in view of the prior art.

The record contains no clear and convincing evidence of nonobviousness or **unexpected results** for the combination method herein over the prior art. In this regard, it is noted that the specification provides no side-by-side comparison with the closest prior art in support of nonobviousness for the instant claimed invention over the prior art.

In view of the rejections to the pending claims set forth above, no claims are allowed.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is 571.272.0627. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on 571.272.0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. Anna Jiang, Ph.D.  
Patent Examiner, AU 1617  
February 7, 2004

  
**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**

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